IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 204.

GEORGE CHRISOS,
Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY BRIEF.

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REPLY BRIEF.

ARGUMENT.

The issue here is whether the reading by the court, trying the case without a jury, of a probation report on the prosecuting witness was prejudicial to petitioner, requiring a new trial. The Government's answer is that we failed to show that the report contained prejudicial information (Br. Op. pp. 10-11). Yet the Government concedes that, since the report is confidential, defense counsel could not see it (Br. Op. p. 10), citing **Williams v. New**

York, 337 U. S. 241, 245. How then can we show prejudice? What we did in our petition was to point up some of the information usually contained, as the Government knows, in such reports. And if it did contain those usual things—as it likely did—we believe it was clearly prejudicial to the petitioner. Surely we are not expected to show what the report contains when we are denied access to it.

We do not claim that Rule 32 (*c*) (1) applies to the instant case. But since the reading of such a report by the court is prejudicial to a defendant being tried by a jury, *a fortiori*, the reading of such a report by the court on the prosecuting witness is prejudicial to a defendant being tried by the court, where "The Government's case was largely based upon the testimony of the prosecuting witness" (Opinion below, Pet. p. 10). The self-serving testimony of the Madame, who concededly was Hausback's East St. Louis contact in procuring a prostitute, supplied little, if any, corroboration of the prostitute's testimony (R. 49-61).

The Government also claims that the prejudice was caused by defense counsel in requesting 15 days to file a trial brief (Br. Op. p. 9).[1] To complete the logic, it points to Rule 32 (a) requiring the imposition of sentence without unreasonable delay. But we see nothing in that rule which impelled the court to sentence the witness before deciding the instant case. She had entered a plea of guilty only two days before the instant trial (R. 26-27) and she was not confined (R. 7). Indeed, the court placed her on probation (R. 151). Under such circumstances, we doubt that the court felt that she would complain of a short delay in imposing such sentence.

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[1] There is nothing unusual in the fact that a brief was not filed. For such a request is frequently made to give counsel time to determine whether a brief would be helpful to his client. The case was ready for argument and decision on February 26.

When the court examined the probation report, it knew that it had the instant case pending for decision. We submit again that propriety and justice required a decision in the instant case before examining such report, and we reassert, as we did in the court below, that such examination was prejudicial to the rights of this petitioner, requiring a new trial (See Opinion below, Pet. pp. 10-11).

For the reasons stated in the petition and herein above, we respectfully submit that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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